REMARKS

By this Amendment, Applicant amends claims 9, 12 and 18, and adds claim 21. Accordingly, claims 1-16 and 18-21 remain pending in the application.

Reexamination and reconsideration are respectfully requested in view of the following Remarks.

RESTRICTION REQUIREMENT

The Examiner is respectfully requested to acknowledge the traversal of the Examiner's restriction requirement dated 17 November 2006 and Applicant's arguments presented in the Response dated 14 December 2006, and to indicate whether or not he will reconsider this decision, so that if this decision is final, then Applicant can Petition to have this decision overturned.

35 U.S.C. § 101

Applicant respectfully traverse the rejection of claims 9-16, 18, and 19 under 35 U.S.C. § 101 for at lest the following reasons.

At the outset, ***NONE*** of these claims 9-16, 18, and 19 is directly to any abstract idea, natural phenomena, or a law of nature. Indeed, the Examiner totally fails even to identify to ***which*** of these three categories he believes these claims belong!!!

"Abstract idea?" A landscape plan is a tangible product that can be used by a homeowner to improve their property. Thousands and thousands of people have landscape plans produced for their properties every year by landscape design professionals. Respectfully, it appears that perhaps the Examiner has never seen a landscape plan. If he has, then Applicant does not understand how could state that such the production of such a plan is an "Abstract Idea."

Then the Examiner goes on to cite Diehr and Benson regarding "laws of nature" and "mathematical formula." What could any of that POSSIBLY have to do with Applicant's claimed invention? What "law of nature" produces a landscape plan? Where does the specification of claims mention even a SINGLE mathematical

formula? This is all totally irrelevant to Applicant's claims.

Applicant respectfully submit that the rejection of Applicant's claims under 35 U.S.C. § 101 is very clearly improper and therefore respectfully request that it be withdrawn.

35 U.S.C. §§ 102 and 103

The Office Action rejects: claims 9-11, 15 and 16 under 35 U.S.C. § 102 over Mykrantz U.S. Patent 5,246,253 ("Mykrantz"); claims 12-13 under 35 U.S.C. § 103 over Mykrantz in view of Broderbund (Total 3D Landscape Design 3.0); and claims 14, 18 and 19 under 35 U.S.C. § 103 over Mykrantz in view of Brimberg U.S. Patent 4,652,239 ("Brimberg").

Applicant respectfully submits that all of these claims are patentable for at least the following reasons.

Claim 9

Among other things, the process of claim 9 includes determining locations for plants to be placed on a property with reference to least one image of the property and a survey of the property.

Applicant respectfully submits that Mykrantz does not disclose or suggest any such features.

Accordingly, for at least these reasons, Applicant respectfully submits that claim 9 is patentable over Mykrantz.

Claims 10, 11, 15 and 16

Claims 10, 11, 15 and 16 all depend from claim 9 and are deemed patentable over Mykrantz for at least the reasons set forth above with respect to claim 9, and for the following additional reasons.

Claim 16

Among other things, the process of claim 16 includes providing a list of specific plants belonging to each generic plant category.

Applicant respectfully submits that it is apparent that a sheet containing decals

which have a color corresponding to a color of a particular ***type of plant*** represented cannot reasonably (or even unreasonably) be considered to "read on" a ***list of plants*** (e.g., "Oak, Maple, Poplar") belonging to a specific category, and the undersigned attorney is extremely confident that the Board of Patent Appeals, and if necessary the Federal Circuit Court of Appeals, will have absolutely no problem understanding that fact if this rejection is maintained.

Accordingly, it is respectfully requested that this rejection be withdrawn.

Claims 12 and 13

Claim 12 has been rewritten in independent form without any change of scope.

Applicant respectfully submits that Broderbund is not prior art for Applicant's invention.

Applicant submits herewith an "Affidavit Under 37 C.F.R. § 1.131" establishing an invention date of at least 5 June 2000, antedating the Broderbund reference.

Furthermore, for the record, Applicant submits that the Broderbund reference has an effective date under 35 U.S.C. § 102 of its actual release date of 6 October 2006, as evidenced by **numerous** Web sites, some exampled of which include: http://www.stormlabs.com/Software/Gardening_Landscape/Product/229626/id/45677/, http://www.smackbomb.com/famousfonts/store.php?c=sftwr&n=923062&i=B00004XQON&x=Total_3D_Landscape_Deluxe_30, and even Amazon.com itself at http://amazon.ampage.net/index.cgi?Operation=ItemLookup&ItemId=B00004XQON, printouts of pages from which sites are attached as Appendix A to this Amendment. Many, many, other webs sites could be cited which all confirm this release date. This date is well after Applicant's filing date of 1 September 2006. The date of 9 August 2000 shown on the Amazon printout supplied by the Examiner is apparently either an error, or perhaps a prerelease sale date at which time the product would have been sold prior to actual completion and release (common in the software industry), at which time the product would not yet have been publicly known or used to qualify as prior art under 35 U.S.C. § 102(a).

Accordingly, Applicant respectfully submits that claims 12 and 13 are patentable over the cited art.

Claim 14

Claim 14 depends from claim 9. Applicant respectfully submits that Brimberg does not remedy the shortcoming of Mykrantz as set forth above with respect to claim 14, and accordingly, claim 14 is deemed patentable for at least the reasons set forth above with respect to claim 9.

Claim 18

Among other things, the process of claim 18 includes determining locations for specific landscape elements to be placed on a property with reference to least one image of the property and a survey of the property

Applicant respectfully submits that neither Mykrantz nor Brimberg, nor any combination thereof, discloses or suggests these features.

Accordingly, for at least these reasons, Applicant respectfully submits that claim 18 is patentable over the cited art.

Claim 19

Claim 19 depends from claim 18 and is deemed patentable over Mykrantz and Brimberg for at least the reasons set forth above with respect to claim 18.

NEW CLAIM 21

New claim 21 depends from claim 9 and is deemed patentable over Mykrantz for at least the reasons set forth above with respect to claim 9.

Furthermore, the cited art references do not disclose or suggest determining the locations for the plants to be placed on the property in accordance with a list of desired landscape characteristics for the property provided by an owner of the property.

CONCLUSION

In view of the foregoing explanations, Applicant respectfully requests that the

Examiner reconsider and reexamine the present application, allow claims 1-16 and 18-21 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283.0720 to discuss these matters.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment (except for the issue fee) to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17, particularly extension of time fees.

Respectfully submitted,
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Date: 10 September 2007

By: _____
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